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**Testimony of Stephen J. Humes, Chair
Public Utility Law Section
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In Opposition to SB840

**"AAC The Elimination Of The Office Of Consumer Counsel,
The Office Of The Healthcare Advocate,
The Office Of Ombudsman For Property Rights
And Certain Legislative Commissions"**

**Government Administration and Elections Committee
March 16, 2009**

Senator Slossberg, Representative Spallone and members of the Committee on Government Administration and Elections, the Public Utility Law Section of the Connecticut Bar Association is comprised of approximately 102 members, who collectively have hundreds of years of experience in handling legal and regulatory matters for public utilities and energy, cable and telecommunications companies. The purpose of our testimony today is to urge you to oppose the elimination of the Office of Consumer Counsel, as initially proposed in SB No. 840.

The Office of Consumer Counsel ("OCC") was established by this legislature as an independent body ". . . to act as the advocate for all consumer interests in all matters which may affect Connecticut consumers with respect to public service companies, electric suppliers and certified telecommunications providers."¹ The OCC represents the interests of consumers in virtually all formal proceedings before the Department of Public Utility Control ("DPUC"). By statute, the OCC is authorized to appear in and participate in any regulatory or judicial proceedings, federal or state, in which the interests of Connecticut consumers in utility matters may be affected.² The OCC may also appeal from any decision of the DPUC.³

The underlying intent of the legislative proposal to eliminate the OCC and other state commissions and offices was to cut expenses. Eliminating the OCC, however, does not directly save the taxpayers of this State any money. Like the DPUC, all the expenses of the OCC are assessed to and paid by the utilities and other companies regulated by the DPUC.⁴ Both the DPUC and the OCC are fully funded by those

¹ General Statutes § 16-2a(a).

² General Statutes § 16-2a(a).

³ General Statutes § 16-2a(a).

⁴ General Statutes § 16-2a(h); General Statutes § 16-49.

assessments made on those regulated companies.⁵ The proposal to eliminate the OCC is not supportable and will not save the taxpayers a single dime. For the following reasons, our members voted strongly in opposition.

It is indisputable that the function of the OCC in representing the consumers' interests in utility cases is a valuable one and SB840 did not propose to eliminate that function. Rather, SB840 would reassign the OCC duties to the Office of the Attorney General ("AG"), even though the Attorney General has publicly stated that his Office would not be able to duplicate those functions. First, the OCC is comprised of very experienced and highly trained utility specialists, many of whom have considerable utility and related accounting experience, which is not available in or necessarily compatible with the workings of the State's major law office run by the AG. Secondly, the AG is by law required to defend the actions of state agencies, including the DPUC.⁶ In some recent significant cases, a court has ruled that the OCC, not the AG, should be representing the interests of the consumers.⁷ In part, this results from the AG's statutory duty to appear and represent the DPUC "in all suits and other civil proceedings

...⁸

Furthermore, there are some public interest functions on behalf of consumers that the AG's office cannot or has not done, but the OCC has responsibly performed. For example: the OCC embraced Connecticut's participation in the settlement that created the forward capacity market within the New England electric market, saving Connecticut ratepayers hundreds of millions in what could have been assessed locally for the electric grid congestion here when the AG's office refused to embrace the settlement among New England participants in the market. Furthermore, the OCC has agreed to sign confidentiality agreements and participate in the DPUC's vetting of wholesale electric procurements by Connecticut Light & Power Co. and United Illuminating (thereby assuring that consumer interests are at the table screening bids before they are procured), whereas the AG's office has declined to sign confidentiality agreements and participate.

Finally, the OCC presents the opportunity in many DPUC proceedings and related court proceedings for the interests of the consumers to be vindicated by judicial decision or by settlement in ways that the DPUC just cannot do by itself, with or without the assistance of the AG.

⁵ General Statutes § 16-49.

⁶ General Statutes § 3-125.

⁷ For instance, in the recent federal court litigation brought by the OCC against AT&T and the DPUC concerning the issue as to whether AT&T's video service was a cable service as that term was defined by the federal Communications Act, the AG was denied intervenor status by the court inasmuch as the OCC was the party that by statute was authorized to represent the interests of Connecticut cable consumers. See Office of Consumer Counsel v. Southern New England Telephone Company d/b/a AT&T Connecticut, 3:06cv1106 (JBA) (D. Conn.).

⁸ General Statutes § 3-125.

Most of the lawyers who are members of the Public Utility Law Section are in private practice or are employed by companies who are regulated by the DPUC. Most of us have appeared in matters in which the OCC has opposed our clients or our employers. Nevertheless, we stand in near unanimity opposing the elimination of the OCC primarily for one reason: The Process. Without the OCC, the record in formal dockets would not be as fully developed and the parties, due to the fairly strict *ex parte* prohibitions that generally bar substantive discussions with DPUC commissioners and staff, would not be able to have meaningful discussions on ways to resolve or address complex issues that frequently require expedited consideration. The OCC has the unique ability to facilitate those discussions and to assist the DPUC, the consumers, and even the utilities from time to time, in helping to ensure that the process by which these often complex issues of law, regulation and policy can be susceptible to resolution.

Finally, we would like to point out that the OCC has also served the General Assembly as a resource by assisting the members of the Energy & Technology Committee as requested to ensure that the interests of consumers are also fully considered in legislative proposals.

For all of these reasons, the Public Utility Law Section of the Connecticut Bar Association respectfully urges this Committee to reject the proposal to eliminate the Office of Consumer Counsel.